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HOUSE OF REPRESENTATIVES
REPORT
115–835

RESOLUTION OF INQUIRY REQUESTING THE PRESIDENT, AND DIRECTING THE SECRETARY OF HEALTH AND HUMAN SERVICES, TO TRANSMIT, RESPECTIVELY, CERTAIN INFORMATION TO THE HOUSE OF REPRESENTATIVES REFERRING TO THE SEPARATION OF CHILDREN FROM THEIR PARENTS OR GUARDIANS AS A RESULT OF THE PRESIDENT'S "ZERO TOLERANCE" POLICY

JULY 18, 2018.—Referred to the House Calendar and ordered to be printed

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Mr. WALDEN, from the Committee on Energy and Commerce, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H. Res. 982]

The Committee on Energy and Commerce, to whom was referred the resolution (H. Res. 982) of inquiry requesting the President, and directing the Secretary of Health and Human Services, to transmit, respectively, certain information to the House of Representatives referring to the separation of children from their parents or guardians as a result of the President's "zero tolerance" policy, having considered the same, report thereon without amendment and without recommendation.

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PURPOSE AND SUMMARY

H. Res. 982 requests the President, and directs the Secretary of Health and Human Services, to transmit to the House of Representatives, not later than 14 days after the date of the adoption of the resolution, records relating to the President's "zero tolerance" policy.

BACKGROUND AND NEED FOR LEGISLATION

The Committee began investigating the U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement's (ORR) management and treatment of unaccompanied alien children (UAC) beginning in 2014 after the dramatic surge in border crossings by UAC from Central America as well as a series of media reports regarding allegations of abuse, including sexual abuse, of minors in HHS custody. In 2014, the Committee held a bipartisan roundtable for members on issues related to UAC. In 2015 and 2016, the Committee sent three letters to HHS raising concerns about the treatment of children while in the care and custody of ORR and the then-lack of follow up to ensure that children were cared for properly after being placed with a sponsor.

On June 29, 2018, the Committee sent a letter to HHS Secretary Alex M. Azar II asking a series of questions and requesting documents about ORR's operations related to the management and treatment of UAC, including the reunification of children with their parents.

On July 9, 2018, Chairman Walden led a bipartisan delegation of members of the Committee on Energy and Commerce to McAllen, Texas, and surrounding areas, to view border facilities and the border between the United States and Mexico. Members visited the following facilities:

- Department of Homeland Security (DHS), Customs and Border Protection (CBP) Centralized Processing Center (CPC) in McAllen, Texas;
- Tour of the border between the United States and Mexico near McAllen, Texas;
- Department of Health and Human Services, Office of Refugee Resettlement (ORR) grantee facility, Southwest Key Facility "Casa Padre" in Brownsville, Texas;
- DHS, Gateway Bridge Port of Entry in Brownsville, Texas; and
- DHS, Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) Port Isabel Detention Center.

This memorandum is compiled from the notes and recollection of staff who participated in the CODEL. It is not a comprehensive collection of all information learned during the trip.

I. THE RIO GRANDE VALLEY SECTOR AND THE U.S.-MEXICO BORDER

Members received a tour of the "line"—the border—between the U.S. and Mexico near McAllen, Texas. The Rio Grande Valley (RGV) sector of the border includes the facilities visited on July 9. The RGV includes more than 34,000 square miles of Southeast Texas, including 320 river miles and 250 coastal miles.

The RGV has the highest apprehension rate of UAC and family units on the Southwest border. According to CBP officials, cartels and other smugglers send UAC and family units across in dense refuge areas—areas with thick vegetation along the Rio Grande river—known to CBP. This means that, while CBP agents are apprehending family units and UAC from what are effectively designated areas, cartels and other smugglers can bring in drugs and other contraband through other areas along the border in the RGV.

There are approximately 3,100 CBP agents in the RGV. Each day, roughly 900 agents are at checkpoints or on the border line, and 200 agents work to process individuals apprehended crossing the border illegally. CBP estimated that it needs another 500 agents in just this area of the border to provide adequately patrol coverage. CBP patrols the RGV border line by air, boat, on land (by vehicle, horse, and foot), and by utilizing permanent and mobile surveillance systems.

CBP officials explained the various challenges they face within the RGV sector due to the variation in the terrain and characteristics of the Rio Grande river. Examples of those challenges include dense vegetation and changes in the river's width and depth. The tools and equipment that they need to patrol these various terrains are more extensive than other sectors. For example, the river alone can require different types of marine vessels or boats given the variations in width and depth. CBP has a pilot initiative underway to increase the use of drones on the border, but it is difficult to use drones because the operator must keep a clear line of site with the drone. In addition, CBP must operate drones at specified elevations and obtain permits from the Federal Aviation Administration (FAA) for missions, especially given the proximity of the border to McAllen International Airport. Drones also have limited effectiveness in this sector due to the dense refuge areas on one or both sides of the border. The refuge areas on the U.S. side of the Rio Grande river are under the jurisdiction of the Fish and Wildlife Service. There are also many areas where private property runs up to the Rio Grande river. Many of the crops grown in this area are tall crops, which also makes it difficult to view and detect individuals (or goods, in the case of drugs and other contraband materials) moving through the property.

Due to the dense refuge areas on both sides of the border, individuals crossing the river from Mexico typically cannot be seen until they are in a raft on the Mexican side, and are quickly lost in the refuge area. They are often apprehended by CBP once they emerge from the undergrowth. Family units and UAC are seeking to be apprehended by CBP officials. One CBP agent said, "they arrest us." Roughly 100 UAC per day are apprehended in the RGV. CBP officials could not provide an average number of persons apprehended per day in family units. Often individuals are apprehended in large groups that include individuals, UAC, and family units.

CBP officials stated that additional "enforcement zones" and additional technology would be helpful to secure the border in the RGV. The delegation viewed one such "enforcement zone" that was previously created. The area allows CBP agents to see individuals as they exit the refuge area. One CBP agent said that the creation

of a road along the Rio Grande river in the RGV would be very helpful.

CBP agents emphasized the challenges in the RGV sector but noted that different areas of the border with Mexico require different solutions, and something that would be helpful in the RGV may not be helpful in another part of the border. CBP showed members a video detailing changes in enforcement and apprehensions at different border sectors, including the RGV, from FY 1992 to FY 2016. The video can be found here: https://www.youtube.com/watch?v=jRihEaftS0M.

CBP estimated that 6,000 individuals illegally enter the U.S. in the RGV each week; CBP apprehends roughly 4,000–4,200 people. Family units and UAC pay roughly $4,000 to smugglers to make it to the U.S. border. According to CBP, family units and UAC want to be apprehended by CBP, so their cost is lower. The smuggler will bring the family unit or UAC to the edge of the river on the U.S. side of the border and immediately return across to Mexico. The smuggler typically does not leave the raft on the river, so it is difficult for CBP to apprehend the smuggler himself. Individuals who want to get past the checkpoints further into the U.S., for example, to Houston, pay roughly $8,000. For even more money, cartels and smugglers will bring an individual to any city in the U.S. An individual seeking to enter the U.S. illegally can also pay more money to avoid having to walk or travel through refuge areas.

CBP estimated that $1.3 billion per year is generated for the cartels and other smugglers bringing individuals into the United States through only the RGV. The expenses for the journeys are roughly $640 million, which includes rafts, guides, drivers, stash houses, bribes, etc., and the profits are roughly $658 million.

II. DHS CUSTOMS AND BORDER PROTECTION CENTRALIZED PROCESSING CENTER IN MCALLEN, TEXAS

The delegation visited a CBP Centralized Processing Center (CPC) facility in McAllen, Texas and was provided a briefing and tour of the facility. The briefing included information regarding the shift in immigration patterns across the southern border and how those shifts in patterns have been addressed by the U.S. to date. This CPC facility is an example of the first facility that a person or family will visit after being apprehended for an illegal border crossing. There are two temporary detention facilities at this location. There is a 55,000-square foot facility which houses family units and UAC, which members viewed. There is a second facility that houses men and women who are not UAC or part of a family unit. The facility was quickly built after the surge of UAC in 2014. The facility can hold 3,300 people. On July 9, 2018, approximately 1,300 people were at the facility.

Prior to the creation of this facility, individuals and families apprehended at the border were processed at the McAllen station, which had a capacity of only 250 people. The video that CBP showed the delegation included images of the CBP facilities in McAllen prior to the creation of this facility, beginning at minute 4:12. The video can be found here: https://www.youtube.com/watch?v=jRihEaftS0M.

Individuals are held in this facility for an average of 50 hours for processing. The longest instance of someone being held in this facil-

ity that CBP could recall was one week. Upon arriving at the facility, the personal belongings of each individual are taken and stored. Individuals are provided a "claim check" for their belongings, which are then returned upon an individual's departure from the facility. If an adult or child's clothes need to be laundered, CBP provides new clothing and launders and then returns the original clothing. Individuals receive meals and snacks are readily available. Toilet and shower facilities are available, toiletries and other items such as diapers are provided, and each individual is issued a soft mat for sleeping and a hygienic mylar "space blanket" for warmth. Televisions with age-appropriate entertainment were provided in each of the facility's zones. Representatives from the consulates of several countries are on site.

The building is divided into four "zones"—male head of household (men traveling with children); female head of household (women traveling with children); male UAC; and female UAC. In most situations, family units are held in the same zone. There are exceptions to this. For example, an older daughter traveling with her father will not be housed in the male head of household section. At the time of our visit, there was one family where the father and one young child were held in the male head of household section, and an older daughter was held in the female UAC section. CBP agents said that they would take them out of the respective areas to talk with each other any time they asked.

Processing by CBP includes determining whether a family relationship exists or if there is any evidence of fraud. Most of the time, CBP does not discern evidence of fraud or trafficking within the family units. However, there are exceptions. For example, CBP officials recounted that, just a few days before the Committee's visit, a man crossed the border with a four-month-old baby that he claimed was his child. The demeanor of the man raised suspicions of CBP agents. Upon questioning, he then said that he was not the child's father, but the child's uncle. CBP agents searched their records and found that he had entered the U.S. the previous year with another child. When CBP agents asked about the whereabouts of that child, the man said that he did not know. Upon further questioning, the man admitted that he was not a relative of the infant at all, and the infant was separated from the man who brought him or her across the border.

After CBP processes those apprehended at the border, UAC are sent to HHS Office of Refugee Resettlement (ORR) shelters. HHS tells CBP which shelter a UAC should be sent to, and CBP transfers the UAC. Family units are referred to ICE detention facilities. If ICE does not have the capacity to detain the family, then they are released, typically with an ankle bracelet, and given a notice to appear at a subsequent immigration hearing. While there are several thousand ICE detention beds for women traveling with children, there are less than 90 detention beds for men traveling with children in the U.S. Adults apprehended illegally entering the country without minor children are also referred to ICE detention facilities. If ICE does not have the capacity to detain an adult, then he or she is released, typically with an ankle bracelet, and given a notice to appear at a subsequent immigration hearing.

Members asked about the implementation of the "zero tolerance" initiative and whether there was coordination between federal

agencies prior to the implementation or announcement of this policy. One CBP official stated that, in his opinion, the "zero tolerance" initiative was a good deterrent, but expressed that the policy was not well executed. While CBP did not explicitly state that there was no coordination between federal agencies prior to the public announcement of the "zero tolerance" initiative, CBP officials did acknowledge that the implementation of the "zero tolerance" initiative was not great, and did not consider second, third, and fourth degree impacts, including family separations. CBP officials told staff that, in the RGV, they did not separate children under five from their parents unless there were concerns about fraud or trafficking, or other endangerment issues for the children. CBP officials also clarified that families were not separated in the field. CBP officials could not provide a figure for the number of children in total separated from their parents at this facility.

III. HHS OFFICE OF REFUGEE RESETTLEMENT, SOUTHWEST KEY "CASA PADRE" FACILITY IN BROWNSVILLE, TEXAS

The delegation visited an HHS ORR facility, managed by HHS grantee Southwest Key. The "Casa Padre" facility is licensed to hold just under 1,500 boys between the ages of 10 and 17. The facility originally received a license for 1,200 children, and received a variance for roughly an additional 240 children. Approximately half of all UAC, including separated children, in the RGV are housed at this facility. There are two other Southwest Key facilities nearby that house female UAC, including separated children. HHS also has other grantee sites in the RGV. According to Southwest Key staff, there are 23 other facilities in South Texas, but there isn't another program as big as Southwest Key. The average length of time that a child stays at this facility is 48 to 52 days. The longest amount of time that a child has stayed at this facility is "more than a year." The Casa Padre facility has approximately 1,200 employees.

According to Southwest Key, roughly 90 percent of the children housed in this facility are true UAC, meaning that they entered the U.S. without a parent or guardian. Roughly 10 percent were separated from a parent or legal guardian. For purposes of this section, both true UAC and children separated from their parents are defined as "UAC."

As noted above, UAC and children separated from their parents are first encountered by CBP. CBP notifies HHS ORR that it has apprehended a UAC. ORR does an "intake" out of its Washington, D.C. office and determines to which facility the UAC or separated child should go. DHS facilitates the transfer of the child to that shelter. According to ORR, more than 80 percent of UAC enter the U.S. with information about a potential sponsor and other paperwork.

ORR staff stated that they did not receive consistent information from DHS regarding whether a child was separated from their parents, including information about who that parent is, upon entry pursuant to the "zero tolerance" initiative or otherwise. Sometimes this information was in the information provided by DHS, and other times ORR learned about the separation from the child itself. Case managers work with DHS to obtain additional information needed about each UAC.

Within 24 hours of arriving at Casa Padre, UAC are assessed by a clinician and a case manager who immediately starts the reunification process. Within 48 hours of arrival, children are seen by a doctor for vaccinations, receive an x-ray for tuberculosis, are screened for communicable diseases such as chicken pox, and are screened via interview for information about sexual activity, sexual abuse, sexually transmitted diseases (STD), and chronic conditions, among other medical issues. Southwest Key follows the CDC's catch up schedule for vaccinations. If a UAC says that he or she received a vaccination in their home country, Southwest Key asks for documentation that they received the vaccination. It is rare that this documentation can be provided. If the UAC claims that they have been vaccinated, but documentation cannot be provided, the facility will still vaccinate the UAC. If a UAC tests positive for a reportable communicable disease or STD both the doctor and Southwest Key report that to the state. The sexual abuse screen asks whether a UAC has been sexually abused either in their home country, en route to the U.S., or in CBP or ORR care. UAC are also asked about sexual abuse by clinicians and case managers. UAC receive an educational assessment within 72 hours and are assigned to one of four educational levels, with four being roughly a high school education.

UAC see a clinician at least once a week, sometimes more. They also regularly meet with their case manager. At Casa Padre, each UAC can make two ten-minute phone calls a week—one to someone in their home country (typically a parent) and another to their potential sponsor in the U.S. UAC receive six hours of school Monday through Friday and two hours of outdoor time each day. There are also indoor activity rooms and gymnasiums. Meals are served in 30-minute shifts. The facilities viewed by the delegation were clean. Casa Padre is divided into four quadrants. Each quadrant is identical and includes bedrooms, classrooms, and activity rooms. Each quadrant has an elected student council, including a President, Vice President, Secretary, and Treasurer, and can voice concerns and suggestions to Casa Padre management.

As noted above, according to ORR, most UAC arrive in the U.S. with information about a potential sponsor. The case manager works with the potential sponsor to determine the relationship to the child. ORR policy requires a bonafide relationship—the sponsor must know the UAC in some way. If the potential sponsor is unable to prove his or her relationship to the UAC via birth certificates, then DNA testing is used. Approximately 100–150 UAC at Casa Padre are placed with a sponsor each week. The vast majority of sponsors are parents, aunts, uncles, and grandparents. Some sponsors are close family friends. If a UAC enters the country without an identified sponsor, ORR works with outside groups to determine whether the UAC has a likelihood of receiving asylum. If such a UAC is likely to receive asylum, then he or she would likely be placed in foster care. If such a UAC is not likely to receive asylum, then he or she would likely stay at the ORR facility until their court date. If a UAC turns 18 while in the care of ORR, they are transferred to DHS custody.

When a sponsor is approved, Southwest Key staff travels with the UAC so they can meet their sponsor. Many sponsors are not legally present in the U.S., so they cannot travel to the Casa Padre

facility as it is within the checkpoints in Texas. After a UAC is released to a sponsor, ORR tracks the UAC for 30 days, including by follow-up phone call. If ORR finds that the UAC is not doing well, for example, it is found that they haven't been enrolled in school or are not attending school, ORR files a report. Members asked why HHS does not follow-up at subsequent intervals, such as 3 months, 6 months, 1 year, etc. According to ORR, the UAC must appear for court dates and there are other systems in place should the UAC not appear in court. ORR has previously told the Committee that it does not have the resources necessary to conduct longer-term follow up of UAC once they are placed with sponsors.

As Casa Padre is not a detention facility, it cannot forcibly stop UAC from leaving the property. If a UAC indicates that he wants to leave, staff at Casa Padre speak with the UAC and encourage him to stay, but does not restrain the UAC should they elect to leave. Casa Padre staff stated that two UAC have walked out of the facility since it opened in 2017; one was subsequently apprehended and was stepped up to a higher shelter.

ORR monitors the capacity of its grantee shelters daily and is able to adjust as necessary. For example, Casa Padre applied for and received a variance to house more UAC when that became necessary.

According to ORR officials, children that were separated from their parents and are to be reunified with their parents would be brought by the shelter where they were placed to a reunification site, at which point the children would be transferred to ICE custody and the family unit would be released by ICE due to a lack of family detention space.

IV. GATEWAY BRIDGE PORT OF ENTRY

The delegation visited the Gateway Bridge Port of Entry in Brownsville, Texas. The delegation was briefed and provided a tour by the CBP officials on the Port of Brownsville. The briefing included information regarding the port's area of responsibility; operational infrastructure; its processing and inspection process for passenger, pedestrian, commercial, seaport, and rail border traffic; and admissibility processing.

The Port of Brownsville is the only port of entry in the United States with all operational disciplines (land, air, sea, and rail) under the direction of one port director. The Brownsville area of responsibility extends over 180 square miles and has four international border crossings, an international airport, seaport, rail bridge, and two commercial import/export lots. The operational infrastructure consists of 17 vehicle lanes, 10 pedestrian lanes, 17 immigration processing windows, and eight inbound commercial lanes. In 2017 the Brownsville Port ranked 5th in the number of vehicles processed—4,848,503; 6th in the number of privately owned vehicle passengers processed—10,003,047; 12th in the number of commercially operated vehicles processed—222,406; 13th in the number of trains processed—790; and 12th in the number of buses processed—6,591. Thus far in FY 2018, the Port of Brownsville has processed individuals claiming asylum from 91 different countries. Additionally, they processed approximately 12,000 immigration apprehensions. The Port of Brownsville issues 3,000 to 4,000 I–94s each day.

Port officials cannot turn away individuals or families seeking asylum once they have crossed the border between the U.S. and Mexico at the port of entry. CBP officials process those seeking asylum, creating an "A-file." Individuals or families can stay at the Port for up to 72 hours, and all asylees are sent to ICE ERO after processing by CBP at the port. If the individual or family speaks Spanish, CBP officials can interview and transfer them to ICE ERO within three hours. If a translator is needed then the process can take longer, often six to eight hours. If the Port cannot transfer the individual or family, then the line quickly backs up. CBP officials stand outside the facility on the Gateway Bridge itself and allow people into the facility—both those seeking asylum and those otherwise entering the U.S.—as space permits. The CBP officials on the bridge also do a preliminary review of any paperwork presented by those wanting to enter the U.S. CBP officials expedite asylum processing for humanitarian reasons, including a pregnant mother or a family with young children. There are families waiting to legally claim asylum waiting in Mexico. CBP officials could not provide an estimate of how many families are waiting at this facility or the amount of time that an individual or family typically waits before space is available to process their asylum claim. According to CBP officials, they are processing legal asylum claims as quickly as ICE ERO can pick up the individuals or families. The delegation did not cross into Mexico.

According to CBP officials, approximately 80 percent of people seeking asylum are found to have a "reasonable fear" of persecution, which allows them to stay in the U.S. while their asylum case is pending. Ultimately, approximately 20 percent of people seeking asylum meet the "credible fear" standard.

CBP officials examine the documents provided by the individual or family for obvious indicators of fraud. According to CBP officials, they can often determine if a passport is fraudulent. It is much harder to determine if a birth certificate is fraudulent. CBP officials assume the documents presented are accurate and valid unless there is evidence that it is fraudulent. If an individual presents fraudulent documents, CBP refers the individual for prosecution.

The Port of Brownsville facility was last updated in 1983 and the CBP officials expressed concern over the fact that they don't have a lot of room to handle UACs or family units. The lack of infrastructure is compounded by the fact that finding a facility to house families can take 72 hours. During a walking tour of the facility and bridge, the delegation observed what was formerly office space that has been converted into a room to hold UACs and family units until they are able to transfer them. This room is in the same area as the interview rooms and holding cells for criminals that are apprehended at the port of entry.

In addition to the lack of space, the Port of Brownsville facility is largely using old technologies. According to CBP officials, the Port does not receive enough electricity to run newer scanning technologies or magnetometers.

CBP officials told the delegation that there has been an increase in the male head of household family units coming across the border, 200 last year, and officials shared that there are limited facilities and beds that can accommodate that type of family unit. According to an ICE official at the Port Isabel Detention Center, if a

male head of household family unit requests asylum at the Port of Brownsville facility, CBP officials at Brownsville will interview and process the request and make a request to ICE for male head of household detention bed space. Given the lack of male head of household detention space, ICE will deny the request. The family unit will be sent to a CPC and processed with a notice to appear for a subsequent immigration hearing. Officials also noted that part of the CBP delay is due to the ports infrastructure because the facility is not designed to process the high number of individuals seeking asylum.

V. PORT ISABEL DETENTION CENTER

The delegation visited the U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Port Isabel Detention Center in Los Fresnos, Texas. The delegation was briefed and provided a tour by the ICE officials at the Port Isabel Detention Center. The briefing included information about the history of the facility, the size and classification of the population at the facility, average length of stay and the various reasons that individuals are detained at the Port Isabel facility.

The facility was built in the 1960s and was a former military base. Some of the infrastructure is new, but the facility still has parts of the original structure. The facility is a 1,200-bed facility and only holds adults, both male and female, who are awaiting removal or going through the removal process. The facility is authorized to house level 1 (non-criminal), level 2 (convicted of a minor crime), and level 3 (criminal felony) individuals. Individuals wear different color clothing depending on their level. Individuals classified as level 1 make up the majority of the facility's population. Individuals classified as level 1 do not interact with individuals classified as level 3. Individuals classified as level 2 can interact with individuals in level 1 or level 3, depending on the circumstances. Individuals detained at this facility come from a port of entry after claiming asylum, after apprehension by CBP after illegally crossing the border, often after claiming asylum, or an ICE action.

Upon arrival at the facility, individuals receive a quick medical screening and are classified into levels 1, 2, or 3. Within the first 12 hours, they receive a more thorough medical screening; females are also tested for pregnancy. The average length of stay for an individual is 11 days and on average there are roughly 500 individuals going in and out of the facility on a "good day." There are approximately 4–5 charter flights per week that hold 135 individuals to transport individuals back to their country of origin. Others are released into the U.S. after an interview showing that they have a reasonable fear of persecution if they return to their home country. Of the facility's population, officials noted that approximately 20–30 percent of individuals claim fear of being returned to their country.

According to ICE ERO officials, at this facility, if a pregnant woman is less than six months pregnant and can be returned to her home country within a week, she will be detained at Port Isabel and then deported. If she is more than six months pregnant, or will not be deported within a week, she is released with a notice to appear at a subsequent immigration hearing.

For individuals who are released into the U.S. after a credible fear screening, ICE ERO asks relatives or other people a potential asylee knows to procure a bus ticket for the individual before they are released. Local charitable shelters also help individuals get to their intended destinations.

Currently there are 371 identified parents in custody at Port Isabel, both male and female. ICE is working with HHS and ORR to identify parents and as such HHS is on site conducting DNA testing and matching them with children to ensure that they are a legitimate family. The DNA testing started last week and as of Monday, July 9, ICE officials expected that testing to be completed in the next 2 days. Despite being designated as a family reunification site, officials stated that there they are not equipped to have children at the Port Isabel facility. Instead, a third facility nearby was designated as a place for parents and kids to be reunified and they are working with ORR on that process. ICE ERO officials explained that Port Isabel had been designated as a family reunification site because it is a location to which parents have been moved to facilitate reunification with their children. ICE ERO officials at this facility did not have detailed information on the process by which parents separated from their children would be reunified with the parents at the third facility.

COMMITTEE ACTION

The Committee on Energy and Commerce has not held hearings on the legislation.

On July 12, 2018, the Committee met in open markup session and ordered H. Res. 982, without amendment, reported to the House without recommendation by a record vote of 52 yeas and 0 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 76

BILL: H.Res. 982, Of inquiry requesting the President, and directing the Secretary of Health and Human Services, to transmit, respectively, records related to the President's ''zero tolerance'' policy.

AMENDMENT: A motion by Mr. Walden to order H.Res. 982 reported to the House, without recommendation. (Final Passage)

DISPOSITION: **AGREED TO**, by a roll call vote of 52 yeas and 0 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden	X			Mr. Pallone	X		
Mr. Barton	X			Mr. Rush	X		
Mr. Upton	X			Ms. Eshoo			
Mr. Shimkus	X			Mr. Engel	X		
Mr. Burgess	X			Mr. Green	X		
Mrs. Blackburn	X			Ms. DeGette	X		
Mr. Scalise	X			Mr. Doyle	X		
Mr. Latta	X			Ms. Schakowsky	X		
Mrs. McMorris Rodgers	X			Mr. Butterfield	X		
Mr. Harper				Ms. Matsui	X		
Mr. Lance	X			Ms. Castor	X		
Mr. Guthrie	X			Mr. Sarbanes			
Mr. Olson	X			Mr. McNerney	X		
Mr. McKinley	X			Mr. Welch	X		
Mr. Kinzinger	X			Mr. Lujan	X		
Mr. Griffith	X			Mr. Tonko	X		
Mr. Bilirakis	X			Ms. Clarke	X		
Mr. Johnson	X			Mr. Loebsack	X		
Mr. Long	X			Mr. Schrader	X		
Mr. Bucshon	X			Mr. Kennedy	X		
Mr. Flores	X			Mr. Cardenas	X		
Mrs. Brooks	X			Mr. Ruiz	X		
Mr. Mullin	X			Mr. Peters	X		
Mr. Hudson	X			Ms. Dingell	X		
Mr. Collins	X						
Mr. Cramer	X						
Mr. Walberg	X						
Mrs. Walters	X						
Mr. Costello	X						
Mr. Carter	X						
Mr. Duncan	X						

07/12/2018

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the findings and recommendations of the Committee are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H. Res. 982 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to request the President and direct the Secretary of Health and Human Services to furnish certain records relating to the President's "zero tolerance" policy.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

H. Res. 982 requests the President, and directs the Secretary of Health and Human Services, to transmit to the House of Representatives, not later than 14 days after the date of the adoption of the resolution, records relating to the President's "zero tolerance" policy.

DISSENTING VIEWS

I submit these dissenting views, as Ranking Member of the Committee on Energy and Commerce, in opposition to the failure by the Republican majority of the Committee to act favorably upon H. Res. 982.

On June 14, 2018, I sent a letter to the Secretary of Health and Human Services (HHS) asking him to answer some questions about the Trump Administration's implementation of a "zero tolerance" immigration policy that resulted in the forcible separation of all minors, including very young children, from their parents and family members. My letter requested details about the HHS Office of Refugee Resettlement (ORR) and ORR's ability to track the minors in its care, as well as the role of ORR Director Scott Lloyd in facilitating the release of certain minors.

Six days later, on June 20, 2018, every Democratic Member of the Energy and Commerce Committee signed a hearing request letter to Chairman Walden and Health Subcommittee Chairman Burgess emphasizing that the Committee must immediately hold a hearing to examine the implications of the "zero tolerance" policy and "to gain clarity on what children are being placed in ORR's custody, how they are being cared for, and the long-term implications these policies may have on their health." The Democratic Members urged Chairman Walden and Chairman Burgess to invite key officials and other pediatric health care experts to testify regarding the impacts of this policy.

On June 20, 2018, after sustained public outcry regarding the Administration's family separation policy, President Trump signed an Executive Order ending the family separation policy. Following this action, I again called on Chairman Walden to schedule a hearing as soon as possible.

Now, nearly a month after my initial request, the Chairman continues to refuse to schedule a hearing or provide any assurances that a hearing will be scheduled in the future.

On June 26, 2018, I requested additional information from the Secretary of HHS and expressed my concern about the ability of ORR and the Department of Homeland Security (DHS) to reunite separated children and parents in a timely manner. I asked for information about the constantly changing numbers of children in ORR's care that were forcibly separated from their parents, and whether all family separations had effectively ceased following the June 20 Executive Order. I also inquired about the system by which HHS and ORR track those children who are in its care, and how HHS ensures identifying information is connected to each child. Additionally, I asked how HHS worked with DHS and Customs and Border Patrol (CBP) to obtain information about a child's parents or family, and who is the primary Administration official in charge of managing reunification. Most critically, I further

sought information on whether ORR took or was taking any steps to offer special care or treatment to children who may have suffered trauma as a result of being forcibly separated from their family.

Following continued inaction from the Chairman, on June 27, 2018, during a health subcommittee markup, I offered an amendment to H.R. _____, the Pandemic and All-Hazards Preparedness Reauthorization Act of 2018, which stated that it is the sense of Congress that:

> (1) The Secretary of Health and Human Services should consult with such public health officials as may be necessary to determine whether the separation of children from their parent or guardian as a result of the Trump Administration's "zero tolerance" policy is a public health emergency;
>
> (2) The Committee on Energy and Commerce of the House of Representatives should hold at least one hearing to examine the current status and welfare of those children who have been separated from their parent or guardian as a result of the Trump Administration's "zero tolerance" policy and the long-term implications of such policy on the health of such children; and
>
> (3) The Secretary of Health and Human Services, the Director of the Office of Refugee Resettlement, and the Assistant Secretary for Preparedness and Response should be called as witnesses for such hearing."

Collectively, every Republican Member of the Health Subcommittee who cast a vote on my amendment opposed it. My amendment failed on a roll-call vote.

Given the Chairman's failure to schedule a hearing and the Administration's failure to provide sufficient answers to the questions raised, on July 3, 2018, I introduced H. Res. 982 in order to obtain documents and other information on the health and welfare of children forcibly separated from their parents or guardians as a result of the President's "zero tolerance" policy, as well as the long-term implications of this policy on the health of those children.

One day before the Committee's consideration of H. Res. 982, on July 11, 2018, I received the first and only written correspondence from HHS on this issue. HHS's response failed to answer most all of my questions, including details on the process HHS and DHS are utilizing to facilitate reunification. Additionally, HHS's written response provided no details on the long-term health implications of these children or how HHS will ensure reunification if a parent is deported without his or her child. These questions remain unanswered.

At the markup of H. Res. 982, I once again called on Chairman Walden to hold a hearing on this matter and presented numerous reasons why this resolution should be reported favorably. First, I explained that the Resolution was neither premature nor overbroad, as the inadequate responses from the Administration to my multiple requests on this issue warranted the Resolution. While the Resolution requested copies of all documents and other records, given the importance of this issue and the immense need for oversight of the Administration's actions and response, the breadth of this request is appropriate. Additionally, my resolution was not

premature as the Administration was asked to respond in writing to each of my questions not later than July 6, 2018.

I noted further that my resolution only covers categories of information that are already in the possession of the President or HHS Secretary and nothing in the Resolution threatens any basis upon which the President can assert Executive Privilege on legally cognizable grounds. The Resolution was also drafted in the proper parliamentary form to be respectful to the Constitutional separation of powers doctrine.

During debate of H. Res. 982 Representative Matsui stated that "Congress has the responsibility to hold the President and his administration accountable for this disaster." She went on to stress that "the government did this, we have to find out why, and where the children are going to be. That is up to us as Congress, we are elected. We are elected representatives of our constituents and it is up to us to really learn what happened." Additionally, Representative Sarbanes noted that "This is a classic case of missing in action" and emphasized that the topic "falls squarely within the jurisdiction and responsibility and obligation of the Committee."

Unfortunately, the Committee ordered H. Res. 982 reported without recommendation. As a result, this Committee will not gain access to critical information required by the Resolution.

This information would have enabled the Committee to conduct essential oversight of the Administration's actions and ensure the Committee has the documents it needs to understand the implications of the "zero tolerance" policy. The Administration's failure to provide sufficient information in response to my requests, coupled with the Chairman's failure to hold a hearing on this matter, has left Congress in the dark on the Administration's actions and response, and as a result the Committee cannot effectively oversee the Agencies responsible for this policy.

The health and welfare of the children impacted by the Trump Administration's "zero tolerance" policy must be evaluated immediately.

My resolution of inquiry is ripe for action. H. Res. 982 is straight-forward and entirely reasonable in what it asks of the President and directs the Secretary of HHS to provide to our Committee and the House of Representatives. For better, far more than worse, family unification is vital to all of as individuals and to our physical and mental health and overall well-being. Regardless of one's citizenship status or the country from which they are migrating to the United States, happy and stable families are undeniably essential to becoming and staying healthy. For that reason alone, separating children from their families, regardless of whose policy it is or the objectives behind that policy, is suspect on its face and must be balanced by through our input, as a separate and co-equal branch of the federal government. Our Committee should not allow or tolerate further delay by this Administration in providing answers to our questions or soliciting our advice and reactions regarding this unabated crisis.

In order to perform our sworn duties as elected representatives and leaders, we must convene an oversight hearing as soon as possible. For these reasons, H. Res. 982 should have been favorably reported.

FRANK PALLONE, Jr.,
Ranking Member.

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